IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 18094 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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KANTILAL VITTHALDAS PATEL & 13 - Petitioner(s)

Versus

STATE OF GUAJRAT & 2 - Respondent(s)

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Appearance :
MR JC VYAS for Petitioner(s) : 1 - 14.
MR. P.D.BHATE, ASSTT. GOVERNMENT PLEADER for Respondent(s) : 1,
None for Respondent(s) : 2 - 3.
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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 07/09/2005

ORAL JUDGMENT

1.In this petition under Articles 226 and 227 of the Constitution of India, the petitioners have challenged the legality and validity of the order passed by the

Secretary (Appeals), Revenue Department, State of Gujarat dated 17.3.2005 passed in Revision Application No. 20/2003 in dismissing the same and confirming the order passed by the Collector, Ahmedabad dated 19.5.1999 by which the Collector, Ahmedabad dismissed the Appeal preferred by the petitioners being Appeal No. 61/1999 challenging the order passed by the Prant Officer, Viramgam Prant, dated 16.7.1982 on the ground of limitation.

2. The dispute is with regard to the land bearing Survey No.702 admeasuring 4-Acres and 5-Gunthas situated at Sola, Taluka Daskoi, District Ahmedabad and the said land was originally owned by one Bai Ganga daughter of Jethaji Jalamji and the said land was New Tenure and restricted land. The original land owner Bai Ganga submitted an application before the Prant Officer, Viramgam Prant for converting the land from New Tenure to Old Tenure and for removing the restrictions and the Prant Officer, Viramgam Prant passed order dated 16.7.1982 to convert the land from New Tenure to Old Tenure on condition to pay 60 times of the assessment by way of premium and on further condition that as and when the same land is to be used for non-agricultural

purpose at that time, the premium is to be paid while converting the land from agricultural to non-agricultural use. It appears that the original land owner paid 60 times assessment pursuant to the order dated 16.7.1982 and got the land converted from New Tenure to Old Tenure. It appears from the record that subsequently the said land has been purchased by the petitioners in the year, 1996. It also appears from the record that as they wanted to use the land for non-agricultural purpose and having realized that they are required to pay premium while converting the land from agricultural to non-agricultural use, heirs of original land owner challenged the order passed by the Prant Officer, Viramgam Prant dated 16.7.1982 before the Collector, Ahmedabad being SB Appeal No. 61/1999 after a period of 17 years and submitted that the land in question is wrongly treated as the New Tenure land and the said Appeal came to be dismissed by the Collector, Ahmedabad by his order dated 2.5.1999 on the ground of limitation. Being aggrieved and dissatisfied with the order passed by the Collector, Ahmedabad dated 2.5.1999 passed in SB Appeal No. 61/1999, the petitioners-purchasers of the land in question preferred Revision Application before the Secretary (Appeal), Revenue

Department, State of Gujarat being Revision Application No.20/2003 and the Secretary (Appeals), Revenue Department, State of Gujarat by his judgment and order dated 17.3.2005 dismissed the said Revision Application confirming the order passed by the Collector, Ahmedabad dated 2.5.1999 by holding that only with a view to see that the petitioners are not required to pay the premium for non-agricultural use and that they have challenged the order passed by the Prant Officer, Viramgam Prant dated 16.7.1982, the Collector, Ahmedabad has rightly rejected the Appeal challenging the aforesaid order dated 16.7.1982 on the ground of limitation. Being aggrieved and dissatisfied with the order passed by the Secretary (Appeals), Revenue Department, State of Gujarat dated 17.3.2005 passed in Revision Application No.20/2003 as well as the order passed by the Prant Officer, Viramgam Prant dated 16.7.1982 and the condition imposed by the Prant Officer, Viramgam Prant for converting the land from New Tenure to Old Tenure by his order dated 16.7.1982 is illegal and that they are not required to pay any amount of premium while getting the land converted into non-agricultural purpose.

3. Shri J.C.Vyas, learned advocate appearing on behalf of the petitioners has submitted that the Collector, Ahmedabad has materially erred in dismissing the Appeal preferred by the original land owner challenging the order of 1982 as the land in question was not a New Tenure Land and by mistake an entry was made in the revenue record that it is a New Tenure Land. It is further submitted that the Secretary (Appeals) has further materially erred in dismissing the Revision Application confirming the order passed by the Collector, Ahmedabad. It is also further submitted that as the land in question was not New Tenure Land the order passed by the Prant Officer, Viramgam Prant dated 16.7.1982 and the condition imposed by the Prant Officer, Viramgam Prant while converting the land from New Tenure to Old Tenure is absolutely illegal. It is further submitted that as the land in question was never New Tenure Land and therefore, there is no question of payment of any premium while getting the land converted into non-agricultural purpose. Therefore, it is requested to allow the present Special Civil Application.

4. It is required to be noted that it is the original land

owner who applied before the Prant Officer, Viramgam Prant to convert the land from New Tenure to Old Tenure and on her application, the land was converted from New Tenure to Old Tenure on payment of 60 times assessment by way of premium and in fact, the original land owner paid the said assessment by way of premium and got the land converted from New Tenure to Old Tenure. Therefore, it is not open for the original land owner and/or the subsequent purchaser to contend that the land in question was never a New Tenure Land. In fact, the original land owner accepted that it is a New Tenure Land and got the land converted into Old Tenure. After a period of 17 years, the heirs of original land owner Bai Ganga challenged the order of 1982 before the Collector, Ahmedabad by way of SB Appeal No. 61/1999, which is rightly dismissed on the ground of limitation and the said order is rightly confirmed by the Secretary (Appeals), Revenue Department, State of Gujarat vide its order dated 17.3.2005 passed in Revision Application No.20/2003. It is required to be noted that the petitioners never challenged the order of Prant Officer, Viramgam Prant dated 16.7.1982 before the Collector, Ahmedabad but it is the original land owner who challenged the same before the Collector,

Ahmedabad in the year 1999 i.e. after the period of 17 years. It is also required to be noted that the petitioners challenged the order passed by the Collector, Ahmedabad dated 2.5.1999 passed in Appeal No.61/1999 before the Secretary (Appeals) which was not filed by them. Under the circumstances, even the Revision Application preferred by the petitioners before the Secretary (Appeals) challenging the order passed by the Collector, Ahmedabad dated 2.5.1999 passed in Appeal No.61/1999 was not maintainable. It is also required to be noted that the original land owner subsequently had not challenged the order passed by the Collector, Ahmedabad dated 2.5.1999 passed in Appeal No.61/99 before the Secretary (Appeals). In the present Special Civil Application, the petitioners have challenged the order passed by the Prant Officer, Viramgam Prant dated 16.7.1982 and the condition imposed while converting the land from New Tenure to Old Tenure. In view of the fact that the original land owner herself has considered the land to be a New Tenure Land and got the land converted from New Tenure to Old Tenure in the year, 1982 and paid the assessment and premium in the year 1982 itself on the basis of the order passed by the Prant Officer, Viramgam Prant dated

16.7.1982, it is not open for the petitioners to challenge the same after the period of 25 years contending that the land in question was never a New Tenure. It is rightly observed by the Secretary (Appeals) in his order that only with a view to see that they may not have to pay the premium while getting the land converted into non-agricultural use, the petitioners have challenged the order of 1982 now, which is not permissible.

5. For the reasons stated above, there is no substance in the present Special Civil Application and the same is required to be dismissed and is, accordingly, dismissed.

(M.R.SHAH,J.)

kdc.